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Pennsylvania's **eRevolution** in Notarization



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The objectives of THE NATIONAL NOTARY are to: (1) publish only quality articles on Notaries, notarization and related subjects; (2) inform our readers of important developments in the field of notarization; and (3) focus on Notary issues and related subjects that are helpful, educational and informative to Notaries and others interested in the field.

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The National NOTARY

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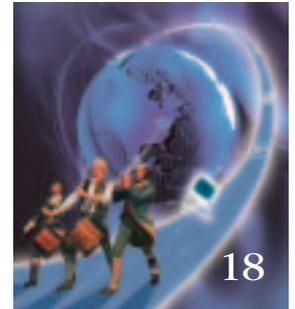
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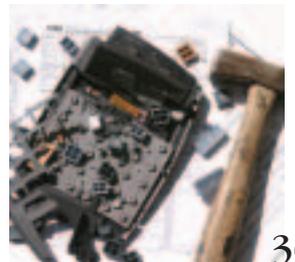
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By Deborah M. Thaw
dmthaw@nationalnotary.org

From The Executive Vice President Pioneering An Exciting New Frontier Of eNotarization

Magellan, Vasco da Gama and Columbus are not names generally associated with that of Notaries. Though a scribe or two may have journeyed with these bold explorers, as we know did with Columbus, Notaries weren't considered the pioneering type.

Even as our own country was being tamed, Notaries wouldn't find themselves sharing the limelight with the likes of John Smith, Daniel Boone or Brigham Young. We know for certain that Notaries provided services to the colonists and earliest settlers; but again, it would appear, adventure eluded us.

That is, until now.

This is an exciting time for the Notary office even as earlier predictions of the demise of the office in the electronic age are being proven unfounded. The advent of electronic transactions had haunted the office in recent years with suggestions that the need for Notaries would be eliminated.

As in the 70's and early 80's when new office computer systems seemed to herald the end of the administrative assistant, receptionist and every staff position in between, we learned that technology couldn't replace

a skilled individual, but it could facilitate and manage the tasks at hand.

In the past decade, electronic transactions have become routinely utilized and accepted, and the Notary has become an integral part of the process.

The largest mortgage companies and banks are working feverishly to establish guidelines and procedures by which the majority of loan closings will be completely electronic. That means that we — America's Notaries — have a role to play.

eNotarization and electronic recording are no longer esoteric concepts that a few software experts talk about at industry meetings. In fact, they are regularly at or near the top of the agenda at meetings of the real estate, legal and banking professions, not to mention state governments.

State regulation of Notaries, as well as the management of notarized documents by county officials, now demands that eNotarization be addressed in a cohesive and cross-disciplinary approach.

Pennsylvania is but one state that has implemented a solution to the growing demand for electronic notarization and recording. Through its

new Electronic Notary Seal program, Pennsylvania is not only pioneering new territory but including Notaries in this new frontier.

Notarization is no longer merely the last item on the checklist before recording a paper document. Notaries are now regarded as critical gatekeepers lending integrity and a human face to electronic processes that are beyond the understanding of all but software engineers.

Not relegated to the sidelines any longer, Notaries are at center stage.

Business and government now acknowledge how important the role of the Notary is in the new electronic environment in which new opportunities for fraud abound.

Historically, Notaries have always been the trusted impartial witness — a somewhat lackluster moniker. Today, a more exciting label seems appropriate for the Notary Public: pioneer.



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OUR MISSION

The National Notary Association is committed to the education and service of Notaries throughout the United States. As the foremost authority on the American Notary office, we are dedicated to imparting knowledge, understanding and unity among all Notaries, and instilling in them only the highest ethical standards of conduct and sound notarial practice.

Letters

An Exception To The Rule

In the July 2005 "Nuts And Bolts," I found an inaccurate statement in the article. It states that "... merely stamping and signing a document — without a certificate — is an exercise in futility and a meaningless, if not illegal, act."

In Maryland, it is legal and it is the law. In 1996, Maryland Notaries were permitted to notarize by merely dating, signing and affixing a seal without presence of certificate wording. A journal must be kept and the usual identification procedures followed. Nonetheless, it is quite the opposite of what the NNA article says and is misleading to Maryland Notaries. I agree with the position and intent of the NNA. But this position goes further than the law provides. In Maryland, a correct and properly concluded notarization is in fact merely signing, dating and stamping.

Frederick Brown
Baltimore, Maryland

While Mr. Brown is correct that Maryland's law does permit notarizations without the use of a notarial certificate, it does not forbid the Notary from completing a certificate. Even in Maryland, prudent preparers of documents will include a notarial certificate to clarify exactly what the Notary is certifying. This can protect the signer, reduce lawsuits and prevent the notarization from becoming an "exercise in futility." — The Editors

Frustrated With 'Clerical' Work

I was once a proud Notary Signing Agent, but now I am disgusted with the profession.

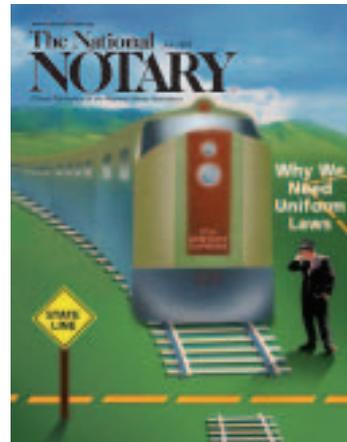
Before the advent of e-docs, who prepared documents and overnighted them to Notary Signing Agents? The answer, of course, is the lenders. And who prepared the documents for the lenders? Their staff.

Then someone got a bright idea: Why should they be bothered with all of this work when they could just e-mail documents to Notary Signing Agents and let them do all of it? NSAs could print up copies of the documents and they would be paid an

extra couple of dollars.

Now it is the Notary Signing Agent who is doing all the clerical work for lenders who deal in e-docs. From what I've seen, Notaries are so hungry for a buck that they are still doing signings for \$40, so I guess it really doesn't surprise me that they have given up their professional status and are now clerical workers.

Henry D. Reiss
North Redington Beach, Florida



Letters To THE NATIONAL NOTARY

We welcome letters, comments and questions from our readers. You may e-mail us at: publications@nationalnotary.org.

Fax us at (818) 700-1942 or send mail to: National Notary Association, Editorial Department, 9350 De Soto Ave., P.O. Box 2402, Chatsworth, CA 91313-2402.

Staying Ahead Of Identity Theft

eBay Notary Seal Auctions A Bad Deal

The auction description on eBay said it all:

“Up for consideration is this new official pocket Notary Public embosser seal. Works perfectly!”

Just come up with the cash, click your mouse button to bid, and you're in business as a Notary Public. No commission required. You can assume the identity of the person named in the seal.

Such an auction probably wouldn't cause the average person on the street to bat an eye. But for Notaries, whose primary function is fighting fraud, the thought of official seals being bought by people who could potentially use them fraudulently is, to say the least, alarming. Unfortunately, the auction described above wasn't a unique event. In December 2005, THE NATIONAL NOTARY tracked multiple sellers on eBay offering Notary Public seals.

In many cases, the auctions were harmless — for example, it's not very likely anyone could commit fraud with an antique embosser from 1892. But other auctions were more disquieting. There was a current official Minnesota Notary seal being sold as “memorabilia.” There was a valid official Connecticut stamp being offered along with a storage case and instructions for its use to the winning bidder. Another company offered to make up Notary stamps for

an online buyer — just send the requested information.

Some of these auctions had caveats attached. The stamp manufacturer mentioned above, when queried, said they would not sell a California stamp because “only California requires authorization” (which is, in fact, incorrect). The Minnesota seal seller added a cautionary note in the auction description: “This is for collector's purposes only, not for official

applied to eBay auctions. Some states, such as California, strictly regulate the sale and disposal of Notary seals. Others, however, do not require seals or control their sale and distribution in any way. How does the law apply if, for instance, a seller in Massachusetts offers a Vermont seal online to a buyer in Florida?

When asked about the online sale of a Connecticut seal, Bernard Liu, a staff attorney with the Connecticut

Secretary of the State's office, said that state Notary laws prohibit a seal's use by anyone other than the Notary — which includes selling the seal on the Internet. “Our statutes say that a Notary may keep and use an official seal, and such a seal shall not be used by any other person,” Liu said. “The implication is you really can't sell the seal.”

England said she was not aware of any reports of misused Notary stamps purchased through online auctions, but she said eBay will watch for reports from users, and their in-house auction monitoring staff will be on alert for any illegal activity. eBay and the NNA are also discussing developing a system to monitor and watch for illegal Notary seal auctions. With efforts like these and diligence on the part of Notaries and state administrators, hopefully we will not be seeing a growing trend of Notary seals sold online in the future.



use.” But once the seal is in a stranger's hands, what prevents misuse?

eBay spokeswoman Catherine England said the online auction house's policies are very firm. “If we find that an auction is improper or illegal, we pull it down immediately,” she said, adding that this also extends to items or listings that could encourage potential illegal activity, not just items that are overtly illegal themselves.

However, England said, the inconsistency between state laws regulating the sale or resale of Notary seals poses some thorny questions when

eBay spokeswoman Catherine England said the online auction house's policies are very firm. “If we find that an auction is improper or illegal, we pull it down immediately.”

AssociationNews

Prominent Speakers, Experts Lined Up For 2006 Conference

The NNA's 28th annual Conference, May 27-31 in Washington, D.C., will feature a number of riveting speakers and experts to address urgent issues and new developments in the Notary office. Workshops, presentations and panels will focus on best practices in notarization.

Among the early scheduled speakers are Betsy Broder, assistant director for the Division of Privacy and Identity Protection for the Federal Trade Commission, who will offer insights, based on her unique experience, at the ID Theft Prevention luncheon.

During her 14 years with the FTC, Broder has supervised consumer fraud litigation in federal court, testified before Congress



Jamie Johns

and led in the prosecuting of telemarketing, Internet, pyramid and business fraud schemes.

Also featured will be Audrea Barnes, a 20-year

Notary Public with 15 years of real estate experience, who will present the "Sorry, Notary, No Can Do!" program; Jamie Johns, president of the Notary Access Association and the NNA's 2004 Notary of The Year, will teach "How to Design a Professional Notary Portfolio"; and Carol Salter, last year's Notary of the Year, will discuss "Notaries and Health care."

Exciting Excursions To Be Available At Conference

The NNA's annual Conference in Washington, D.C., this May will not only offer attendees a chance to build their skills and network with their fellow Notaries Public, but also provide plenty of fun.

This year's Conference features several exciting excursions that spotlight the vast history and rich culture of Washington, D.C., as well as the sights and landmarks that anchor the patriotic heart of our nation.

Attendees can take a day-long tour of Washington, D.C., on May 27, as expert guides bring highlights of our nation's capital to life.

A dinner cruise aboard the Spirit of Washington for an evening of great food and dancing along the majestic Potomac River is also planned for May 29.



The National Notary Association will hold its 28th annual Conference, themed "Tradition of Trust, Spirit of Innovation," May 27-31 in our nation's capital.

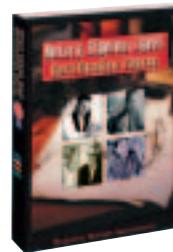
And for those attendees who wish to stay in D.C. for a couple of days after the Conference, there's also a two-day, one-night excursion to historic Williamsburg, Virginia,

beginning June 1.

For additional information about these and more NNA Conference excursions, or to sign up, visit www.NationalNotary.org/Conf2006.

Comprehensive Book Offered For NSA Certification Course

The National Notary Association offers a complete, independent-study book for the Notary Signing Agent. Designed



as a preparation for the NNA's Notary Signing Agent Certification Examination, the *Notary Signing Agent Certification Course* provides an in-depth explanation of the relevant

principles and practices of the professional Notary Signing Agent within the context of loan document signings. The book can also be used as a day-to-day reference guide for practicing Notary Signing Agents.

The course can be purchased by calling (800) US NOTARY (800-866-6827) or online at www.NationalNotary.org/supplies.

AssociationNews

Nominations Now Being Accepted For NNA's 2007 'Notary Of The Year' Award

The National Notary Association is now accepting nominations for its 2007 "Notary of the Year" and "Special Honoree" awards program. These awards recognize individuals who have exhibited a high degree of conscientiousness in executing notarial acts, particularly in adhering to superior standards of practice and high ethical principles.

The 2007 award winners will be featured in the January 2007 edition of THE NATIONAL NOTARY and will be officially honored at the NNA's 29th annual Conference later that year.

For more information about the program, including downloadable nomination papers, please visit the Association's Web site online at www.NationalNotary.org/noty.

Navigating The NNA Web Site

Checking Your Order Status

Having the necessary supplies is a key part of being a Notary, and the NNA understands that timely delivery of newly purchased seals, journals and certificates is important for members to carry out their notarial duties without interruption.

The NNA allows members to check the status of any items ordered from the NNA online at www.NationalNotary.org. On the main page, one can select "Orders & Applications" from the red menu bar on the left side of the screen, then click "Order Status."

The inquirer will then be prompted to enter his or her NNA member number and the order number. Once this is done, a summary of the Notary's order will appear with a list of the items ordered, their cost and their delivery status.

The member can then verify the delivery status of each individual item, obtain the delivery tracking number and click a link to view exactly where the item is. One can also use this page to print out a receipt for personal or business records.

Look for more information on navigating www.NationalNotary.org in future issues.



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NATIONAL NOTARY ASSOCIATION
The Nation's Professional Notary Organization

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Pennsylvania's eRevolution in Notarization

By David S. Thun
dthun@nationalnotary.org



“We have got a republic, if we can keep it.”

- Benjamin Franklin, at the close of the Constitutional Convention, 1787.

In 1787, the founding fathers gathered at the State House in Philadelphia, Pennsylvania — the sacred center of the revolution that formed our country with the signing of the Declaration of Independence 11 years earlier. Their mission was to frame a Constitution for a federal republic that would last into “remote futurity” and would grant all Americans the right to life, liberty and property.

More than 200 years later, Pennsylvania is once again the center of a revolution. This time, however, as America moves further into the digital age, it’s an eRevolution aimed at protecting the same rights and liberties created by the Founding Fathers.

At the heart of this revolution is a statewide system for eNotarization enabled by the National eNotary Registry — the first-ever secure Electronic Notary Seal (ENS) management system for Notaries Public. Pennsylvania officials in cooperation with the National Notary Association pioneered this “best-practice” platform for eNotarization to protect consumers and detect fraud in an era of booming e-commerce, while continuing to maintain the property, due process, business and personal rights that our country’s founders deemed critical centuries ago.

While many people buy books and flowers online, as well as pay their bills and even manage their investment portfolios, a great volume of high-value e-commerce has been foreclosed in recent years because of a major lack of trust in electronic documents, records and signatures. Thus, electronic mortgages, contracts, interstate and international commerce, corporate transactions and other critical dealings have been largely left out of the digital revolution because of fears of identity fraud and forgery.

The *Uniform Electronic Transactions Act* of 1999, now law in virtually every state, followed by the federal *Electronic Signatures in Global and National Commerce Act* of 2000, laid the groundwork for e-commerce by declaring that electronic documents are as binding and legal as paper documents and cannot be rejected simply because they are in digital format. But

those acts did not set any standards or procedures for making eNotarization a reality.

Today, eNotarization powered by the National eNotary Registry provides the trust, integrity and professionalism to this aspect of e-commerce that

had been lost in the rush for the cost and time efficiencies of electronic technologies.

Steve McDonald, recorder of deeds in Lancaster County, Pennsylvania, who was instrumental in spearheading the state’s eNotarization efforts, said he expects to see a boom in electronic business now that there is a system in place.

“There are businesses that wanted to do this but couldn’t because their Notaries haven’t had a chance to electronically notarize,” he said. “From the state government’s perspective, this puts them in a spot where eNotarization is very simple to manage. From the federal perspective, this will promote interstate commerce. The lack of a system like this has, in the past, kept us from doing interstate commerce that needed to be done with electronic documents. This program is overcoming that very last hurdle.”

At its core, the NNA’s National eNotary Registry and Electronic Notary Seal programs enable real-time authentication of electronic Notaries by providing state officials with the ability to issue, renew and revoke the standards-based NNA Seals in real time. Just as importantly, Electronic Notary Seals provide the capability to detect unauthorized alterations to a digital document after it has been notarized.

And, as it has been with traditional notarization for millennia, the process of eNotarization continues to require that a document signer appear in person before a Notary. This has always been a necessity for Notaries in

screening signers for identity, willingness and awareness as they fight fraud, forgery and coercion.

This innovative eRevolution not only opens the doors for vast new volumes of e-commerce, as well as governmental transactions, but it also creates immense new opportunities for Notaries.



Opening Up NEW POSSIBILITIES for Notaries

The ability to notarize electronic documents has many advantages for Notaries, the first being the ability to work with governments and businesses that use such instruments. Many industries that rely on Notaries, such as mortgage lenders, are transitioning from traditional paper documents to a greater use of electronic files. Electronic documents have many advantages over paper. They can be sent to a recipient via the Internet more quickly and less expensively than by standard mail, they do not take up storage space the way paper does, and they are readily “backed up” for safe-keeping at remote locations. Electronic documents are also a boon to recording offices because they are easier to process and allow recorders to file documents faster and more efficiently using less manpower.

Having the new secure electronic notarization system in place will allow Pennsylvania Notaries to integrate their services smoothly with the document management systems of businesses and government agencies. As more businesses begin using electronic documents, Pennsylvania Notaries can expect a greater demand for their services.

“The ENS program in Pennsylvania provides a best practice solution for all states to follow on how to integrate the issuance and control of electronic Notary seals into a secure process of notarizing and recording electronic documents,” said Charles N. Faerber, the NNA’s

Vice President of Notary Affairs. “This is a significant step forward in enhancing the prestige and professionalism of the Notary office.”

A second advantage of eNotarization is that it demonstrates the continued importance and viability of the Notary Public office. When electronic document and signature technology was first developed, the ability to counter forgery and identity fraud in a paperless environment immediately became a major priority. Digital document technology has advanced so rapidly — with the ability to create, duplicate and alter documents — that there was virtual universal consensus in government and the private sector that any sensitive electronically signed document must not only be guarded against forgery but, once signed, must be secure from future alteration.

Initially, there was speculation that automated security procedures might render notarization obsolete. However, research and pilot programs in the public and private sector have demonstrated that a secure eNotarization process overseen by a human Notary remains an essential method for deterring document fraud and verifying that an electronic document was signed with full willingness and understanding. The National eNotary Registry provides this trust, integrity and security.

It is appropriate that eNotarization is taking root and blooming in Pennsylvania, where many great strides

A Historic Collaboration

have been made in the past few years to enhance the quality and prestige of the Notary office. Pennsylvania is one of a handful of pioneering states to mandate education for its Notaries, and the state is now to be commended for its diligence in developing a system that ensures applicants will only be authorized to perform eNotarizations after they have been carefully screened by officials. And as Notaries prove their viability in the electronic medium, they will not only gain more respect but will call more attention to the fact that, in many states, the maximum fees Notaries may charge are decades out of date. The ability to notarize electronic documents will create more job opportunities for Notaries. It will also send a clear signal to lawmakers that the Notary Public is neither obsolete nor insignificant, but rather an essential functionary in the digital age, and fees for services should be increased to adequately reflect their new and more sophisticated duties.

A third advantage is that the ability of state officials to electronically verify and authenticate a seal's use will provide greater protection for signers and Notaries from identity fraud and forgery. A physical inking stamp or embosser can be stolen from an office, retrieved from a garbage can if thrown away, and otherwise used without the Notary's knowledge, even if it is reported stolen. Sometimes, unethical employers or co-workers appropriate or borrow Notary seals for their own use when a Notary is away, or even demand that a Notary surrender a seal to a business when the Notary leaves employment.

This type of impropriety is far more difficult to commit with an Electronic Notary Seal, because its legitimacy can automatically be confirmed online after each use. If an Electronic Notary Seal is revoked or expired, any document recipient can immediately verify its authenticity with the National eNotary Registry. If a seal on a document is checked and found invalid, this legal insufficiency can be examined and repaired.

"The Pennsylvania eNotarization program affords consumers and Notaries unprecedented protection against forgery by providing the capability of detecting unauthorized alterations to a document and misuse of a Notary's electronic signature and seal," said NNA Vice President and Executive Director Timothy S. Reiniger.

And without unchallenged uses of ill-gotten or unauthorized seals, fraudsters will find that falsifying potentially lucrative documents such as deeds of trust or other critical records is not nearly as simple in an electronic format as it is with paper documents.

"Security, without a doubt, is one of the major benefits of the Pennsylvania system," said NNA eNotarization Director Dr. Richard J. Hansberger. "We've gotten away from the old idea of a physical seal actually 'sealing' a document over the years. This new Electronic Notary Seal encrypts a document and makes it revocable and auditable."

Call it being in the right place at the right time.

For years, county recorders in Pennsylvania had been urging the Department of State in Harrisburg to respond to the growing demand for a statewide system for notarizing and recording electronic documents.

Then in mid-2003, the National Notary Association began discussions with these recorders and the Pennsylvania Department of State about its Electronic Notary Seal Program – a system for managing the secure issuance, revocation, and renewal of Electronic Notary credentials – in order to provide the kinds of important consumer protection safeguards that the Department of State was looking for.

"The rest," said Joan Decker, commissioner of records in Philadelphia, "is history."

After more than a year and a half of intensive work and negotiation, the ENS Program will serve as a "best practice" working model for electronic Notaries and notarizations across the nation.

But the road wasn't easy. Complex security and implementation issues had to be addressed before the program could get up and running, and each participant had a vital role: It was up to the county recorders to show the Department of State the growing necessity of the program in business and government, and it was up to the NNA to create a secure system to prevent fraudulent exploitation of electronic documents. This meant the prevention of future unauthorized changes to an electronically notarized document, a method for ensuring the Electronic Notary Seal was issued only to an authorized Notary, and that its revocation and renewal could be managed by the state. In addition, auditing the entire system had to be available 24/7 on the Web, which would allow the Department of State to keep track of an Electronic Notary Seal and to de-authenticate it to stop its fraudulent use.

"We recognized that the Notary seal was something special in the electronic world, and the county recorders realized that as well. But the challenge was in how to convince others of the force the Electronic Notary Seal could convey," said Dr. Richard J. Hansberger, NNA Director of eNotarization.

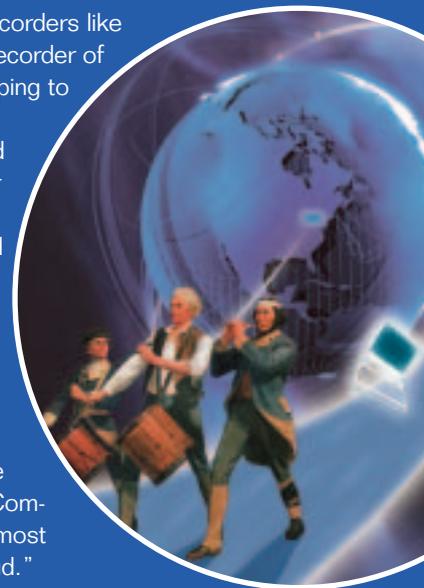
Hansberger credits county recorders like Decker and Lancaster County Recorder of Deeds Steve McDonald with helping to spread that message.

"One wouldn't have worked without the other," Hansberger said. "Without the assistance of people like Joan Decker and Steve McDonald, the ENS Program simply would not exist today."

McDonald agreed.

"The partnership with the National Notary Association was important," McDonald said. "The ENS Program offered what the Commonwealth's office thought was most important: protection against fraud."

— Nevin Barich



Obtaining An Electronic

STEP ONE

Notary

- Complete eNotary application
- Submit application

Secretary of State (SOS)

- Process application
- Approve or reject
- If approve, go to Step Two

STEP TWO

SOS

- Log in to NNA ENS Program online (24/7)
- Enter Notary info
- Authorize Notary to receive ENS

NNA

- Send email notification to Notary, including detailed instructions to complete Step Three

Under the new system, Notaries may apply for an Electronic Notary Seal through the Pennsylvania Department of State. To ensure that impostors do not obtain seals under false identities, the applicant must go through a rigorous screening process. Once the application is filed and approved by the Department of State, the Notary must visit a county recorder's office in person to present identification and the Department's letter of approval.

After the Notary's bona fides are established, instructions are provided that guide the Notary in downloading the Electronic Notary Seal from a secure server provided by the NNA. The seal can then be affixed when electronic documents are notarized.

A major question raised by Notaries concerning eNotarization has been how to safeguard the integrity of the electronic seal and prevent it from being stolen, copied, hacked or otherwise misused. Whenever a Pennsylvania Electronic Notary Seal is used, the recipient of the document may check its authenticity by sending a query electronically through the Internet to the NNA's secure eNotary Registry to verify that the seal is legitimate. If there is a problem with the seal — for example, if it has been reported stolen, or has been revoked by state officials — the Registry will be alerted and inform the document recipient that the

seal is no longer authorized and valid.

If a Notary discovers that his or her seal has been copied, stolen or compromised, the Notary can also revoke the seal online. In addition, the system also provides state officials with the ability to immediately revoke a seal simply by updating the pertinent records in the Registry. This way, if a Notary commits misconduct or the seal is copied, an alert can be sent out so that the seal can no longer be misused without detection.

Use In Other Jurisdictions

NNA eNotarization Director Hansberger emphasized that the Pennsylvania system, one in which the state empowers particular Notaries to act electronically, is the ideal model. This NNA-recommended system will be made available to businesses and government agencies in other states.

Because individual state laws governing the issuance and use of Notary seals vary widely between jurisdictions, the process will vary as well. In states that follow the Pennsylvania model, Notaries will have to apply through the state government before being approved to receive an electronic seal from the NNA. However, Hansberger explained that in every state the NNA will be coordinating with state government agen-

Notary Seal

STEP THREE

Notary

- Complete payment (online or by phone)
- Appear in person at county recorder
- Present ID to county recorder and DOS Letter of Authorization to recorder

Recorder

- Enter ID for Notary online in NNA ENS Program

NNA

- Release Electronic Notary Seal
- Send e-mail notification to Notary including detailed instructions to complete Step Four

STEP FOUR

Notary

- Log in to NNA ENS Program online (24/7)
- Download Electronic Notary Seal

cies to verify commissions and ensure that seals are only issued to properly authorized Notaries Public and only used according to the laws of that jurisdiction.

“The process is identical to the system the NNA uses to issue traditional physical seals in different states,” Hansberger said. “We will issue seals and coordinate with state Notary-regulating agencies to verify the Notary’s commission status. We see Pennsylvania’s system as the best practice, and we think it is the way it should work everywhere, but every state is different.”

What Lies Ahead

Pennsylvania’s Electronic Notary Seal Program is undeniably a major step forward, both for the many Notaries within the state who will soon be performing their duties in a paperless environment and for those in other states who may be following suit.

However, it is important to remember that while eNotarization will bring many opportunities to participating Notaries, it will also impose a burden of responsibility. Notaries who accept an electronic seal take on the responsibility of maintaining the honesty and integrity of paperless documents. As a result, they must not assume these duties cavalierly or without proper preparation.

Education is vital in order to utilize an electronic seal effectively and responsibly. Pennsylvania Notaries

are fortunate that their state already mandates a detailed training program for new Notary applicants which address eNotarization. However, even if not required by law, any Notaries who wish to notarize electronically should take it upon themselves to train and to fully understand their duties.

There is a vast amount of vital information out there, and as seen with recent security breaches at companies such as ChoicePoint, dishonest people are eager to gain it by any means. A Notary who does not properly perform an eNotarization leaves vital information at risk. Know your duties so that you can perform them well.

Also, it’s important to remember that the first generation of electronic Notaries will establish the reputation of those who follow. If Pennsylvania Notaries build a strong reputation for diligence and honesty in the electronic world now, they pave the way for Notaries who will follow them later. Conversely, careless or negligent acts may negatively affect the public perception of electronic Notaries for a long time to come. Any Notary who seeks to perform eNotarizations should not do so lightly. It is a privilege and a duty.

No revolution comes without great change. But this revolution in Pennsylvania promises not only a bright future for Notaries on the new electronic frontier, but a fundamental revolution in the way notarizations are performed for future generations.

Pennsylvania:

Others Will Join the eRevolution

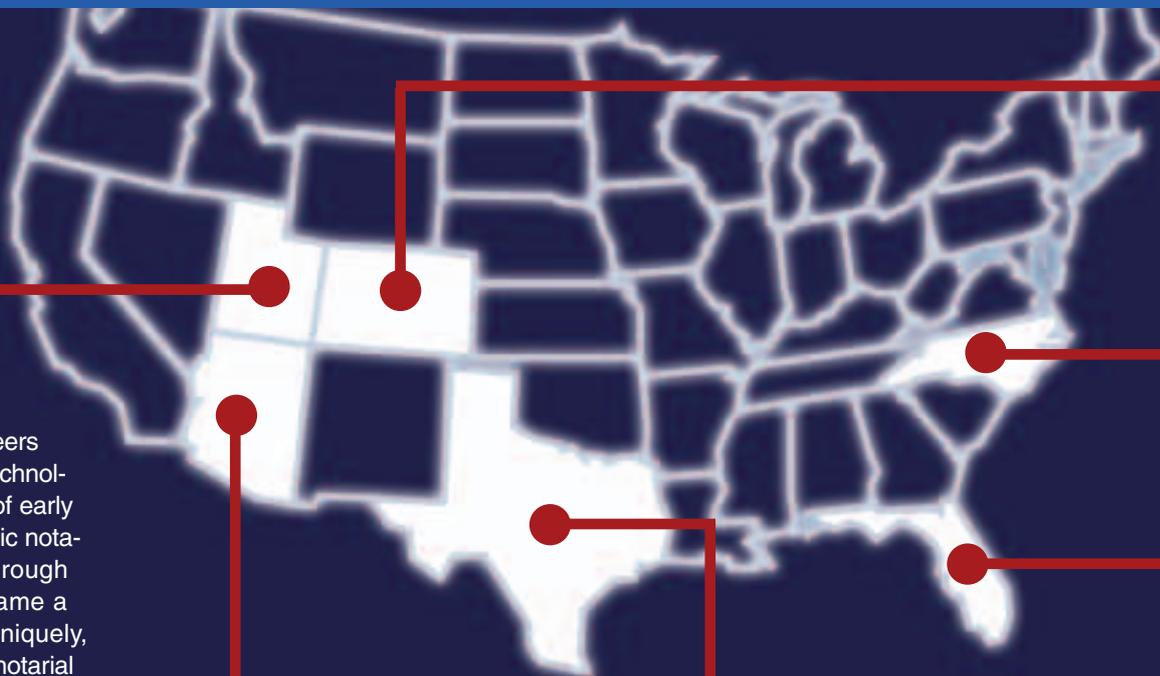
Pennsylvania may be the first to put into practice the National Notary Association's groundbreaking National eNotary Registry and Electronic Notary Seal (ENS) Program statewide, but the interest in eNotarization is growing in intensity across the nation.

The NNA is working closely on eNotarization programs with Notary-regulating officials in a number of states, as well

as with mortgage industry leaders, county recorders, and law enforcement officials concerned about the security of electronic documents.

"This is a new area for Notaries, governments, industries and several other important stakeholders, and we are working closely with all of them to ensure they have significant input and involvement in this vitally important

Development Of eNotarization Has Been A Nationwide Effort



Utah — One of the pioneers in embracing public key technology, Utah was the venue of early pilot programs for electronic notarization and recording, through eNotarization never became a daily, statewide reality. Uniquely, the state also authorized notarial acts (acknowledgments) with the Notary in one location and the signer in another if there were a reliable audio-visual connection, but this never saw fruition. State officials have announced their intent to repeal their digital signature laws and to put in place a more workable system for electronic notarization and recording.

Arizona — One of the first states to attempt to define the role of an "Electronic Notary Public" in legislation enacted in 2000, Arizona does not yet have in place a working and widely utilized system for electronic notarization and recording. This is due in part to criticism that the Arizona law labels certain electronic processes as "notarization" without the direct involvement of a Notary. The state is preparing further eNotarization initiatives for implementation later this year.

Texas — The Texas legislature last year authorized Notaries to keep their records "electronically in a computer or other storage device." The use of electronic journals for recordkeeping is a helpful first step in developing eNotarization further in Texas.

process,” said Dr. Richard J. Hansberger, the NNA’s Director of eNotarization. “We are proceeding cautiously in this very exciting time.”

Hansberger attributes the early success of the Pennsylvania program to its efficiency and security in notarizing documents electronically, and feels that the nationwide interest is a sign the market is real. Pennsylvania is certainly the largest and most widespread “best practice” situation, and the prospective implementation of the ENS program throughout the state rather than in limited regions symbolizes the business and real estate world’s seal of approval, Hansberger said.

One reason several states are developing ENS programs is because the technology greatly benefits the advancing field of e-commerce.

“The program lends greater security to eNotarizations,” said William A. Anderson, NNA Notary Affairs Manager. “Using the electronic seal helps determine if changes were made to a document after it was notarized. It’s much more secure than any other type of electronic signature.”

While select industries lead the way in terms of adoption, various entities will benefit from incorporating ENS capabilities into future transactions.

“The program could have broader applications to a variety of e-document processes in several industries, including the mortgage, insurance, government and private industries, as well as many others,” Hansberger said.

“Also, the NNA is trying to interest other industries that use electronic records, such as the medical and dental fields, into integrating the ENS system.” **NNA**

— Stacia L. Ray

While Pennsylvania has activated a working statewide system for eNotarization and recording, it is important to note the contributions and progress of other state officials, county officials and private industry executives around the nation. In early eNotarization efforts between 1997 and 2001, there was a general feeling that technology itself would solve the problems of authenticating electronic documents. However, it soon became clear that technology couldn’t alone solve the problems of ensuring document security and that the human element — the Notary — remained of critical importance. Here are a few of the significant contributions from other parts of the country that have helped further the development of eNotarization:

Colorado — In legislation signed in 2004, Colorado established a relatively simple and adaptable system for eNotarization that is based on the use of state-issued random numbers to label each electronic act. In 2005, the state created a brand-new electronic role for Notaries, authorizing them to authenticate and transmit encrypted electronic files of photographs of individuals for use by motor vehicle offices, credit card companies and other entities requiring such authenticated photographs.

North Carolina — In 2005, the North Carolina General Assembly repealed the state’s Notary laws and, drawing largely from the National Notary Association’s Model Notary Act, established a statutory infrastructure that integrates paper-based and electronic notarization. The new law authorizes the Secretary of State to set up rules and procedures to regulate and secure eNotarizations; mandates that any Notary must complete a three-hour additional educational course before being authorized to perform eNotarizations; and sets a maximum fee of \$10 for each signature electronically notarized. Importantly, the new rules stipulate that when performing an eNotarization, the Notary must still be in the physical presence of the signer.

Florida — The Sunshine State was perhaps a premature pioneer in eNotarization. The state established statutory authorization for electronic notarizations in the late 1990s, though it did not provide rules for performing these acts. As a result, the legislation was later repealed. Broward County, Florida, was the site where, in a pilot program, one of the earliest electronic real estate documents was successfully signed, notarized and then recorded. Florida’s statute requires newly-commissioned Notaries to receive training in electronic notarization.

Source: NNA Research Center

Strengthening And Professionalizing Is The Foundation Of

By Timothy S. Reiniger, Esq.
Vice President and Executive Director

State Of The Association

Marked by a rising wave of opportunities, challenges and accomplishments, 2005 was a year that brought an unprecedented level of recognition for the mission of the National Notary Association and for the importance of the role of the nation's 4.5 million Notaries Public.

Throughout 2005, identity theft, identity fraud, mortgage scams, forgery and other forms of white-collar crime continued on dramatic upward trends; electronic mortgages, commerce and notarization accelerated on their surefire track to becoming a global reality; terrorism remained a top national security concern; and there were comprehensive changes in many state Notary laws.

Amid these constantly evolving realities, the NNA in 2005 continued to vigorously support Notaries in their vital role as guardian of citizens' property and personal rights, to spark an era of renewed professionalism, and to strengthen

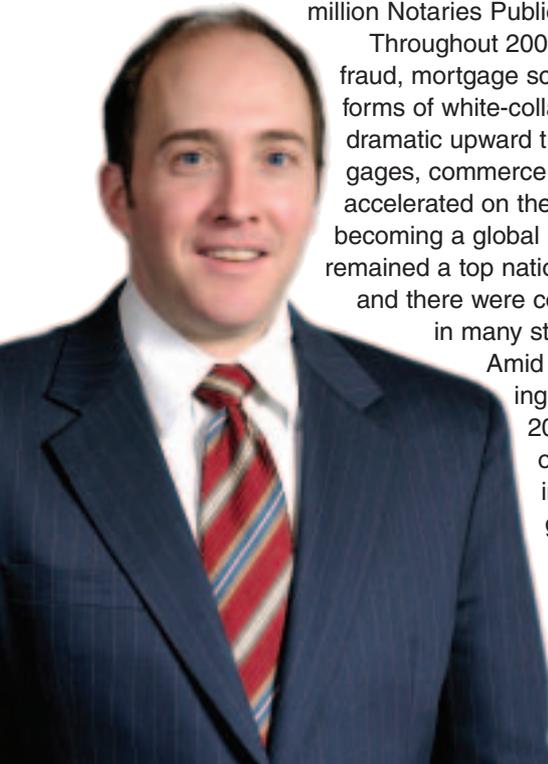
notarial practices through its extensive educational, legislative, public affairs, communications and international initiatives.

The NNA also continued its rapid progress in groundbreaking consumer and Notary protection technology through such eNotarization initiatives as the National eNotary Registry and Electronic Notary Seal programs, upgrades to the Enjoa® platform, and the Identity Theft Verification Passport Program.

Through the NNA's efforts, governments, law enforcement and businesses have come to realize that America's Notaries have long been a vast, underutilized national resource.

Under the determined leadership of President Milt Valera, the NNA and its 200 dedicated employees are proud to have further broadened the professional landscape for Notaries, who carry a profound duty to protect consumers' rights and property, who must adapt to the ever-changing nature of fraud, and who must continue to adhere to the highest standards of professionalism and ethics.

I am pleased to report that the state of the Association is strong. Over the past year there have been several significant developments that have served to further strengthen and professionalize the Notary office.



The Notary Public Office

The NNA's Mission

The NNA's Growing Influence

With the pervasive scourge of identity fraud and forgery continuing to sweep the nation, it is incumbent upon Notaries to be on the front lines of consumer protection, upholding property rights and ensuring due process. Thus, the NNA continued its push for uniform laws, mandatory education, adoption of best practices, and forging partnerships to battle identity and document frauds.

In a major indication of the NNA's growing influence, Federal Bureau of Investigation (FBI) Director Robert Mueller recognized the NNA before the U.S. Senate as one of the Bureau's partners in the continued fight against mortgage fraud. Through the first half of 2005 — based on the most current research available — the FBI was investigating 642 mortgage fraud cases, an increase of more than 500 percent since 2001. During the same period the FBI received more than 17,000 suspicious activity reports from federally insured financial institutions alone. The upward trend is expected to continue.

The NNA's involvement with the FBI began in April 2004 in Washington, D.C., at a meeting with government officials. I, along with NNA Director of eNotarization Dr. Richard J. Hansberger, spoke to representatives from the FBI, the Department of Justice, the National Bank Fraud Working Group, the Department of the Treasury, the Department of Commerce and the Federal Trade Commission.

The NNA's message was clear: Notaries can be used to expose and prosecute criminals committing identity theft, a crime that has affected more than 27 million Americans this decade alone.

On the heels of Mueller's pronouncement, the NNA continued its commitment to fighting fraud with a series of *Identity Theft Prevention Symposiums* aimed at the heart of the nation's battle with ID theft. The multi-city symposiums were held in the states most affected by fraud, which included Arizona, California, Colorado, Florida, Massachusetts, Minnesota and Pennsylvania. The seminars widened the NNA's nationwide campaign to equip Notaries Public with the tools to detect and deter identity fraud crimes, and they attracted thousands of Notaries who were dedicated to

sharpening their fraud-detering skills.

The NNA was also instrumental in inspiring the July 2005 resolution of the National Association of Secretaries of State, which deemed it necessary to reaffirm the secretaries' role in overseeing both the paper-based and the electronic functions of Notaries Public. NASS members issued a written resolution to take the lead in crafting necessary new laws governing electronic notarization that will provide accountability to the public and ensure security in electronic transactions.

The essence of the resolution lies in NASS's commitment to ensure that Notaries Public are able to provide the same critical function in the electronic arena as they have done for centuries in the paper-based world. This is a resolution we applaud, and we appreciate NASS working with the NNA on this issue.

Another success was Ohio's Identity Theft Verification Passport Program, which was announced in late 2004 and put into widespread use in early 2005. Under the program, an identity theft victim can apply for an Ohio "passport" card in conjunction with filing a police report. A police officer completes the online application for the victim, which usually takes about 10 minutes and includes such information as a physical description and a current address. The police officer then electronically captures the victim's thumbprint, signature and facial image using the NNA's Enjoa® technology.

Also on the fraud front, the NNA joined federal, state and local agencies and national advocacy organizations to launch the 7th annual *National Consumer Protection Week* in February 2005, highlighting consumer protection and education efforts around the country. The theme, "Identity Theft: When Fact Becomes Fiction," focused on minimizing the risk of identity theft.



*Director of eNotarization
Dr. Richard J. Hansberger*



And finally, the NNA was honored to present the prestigious *Calvin Coolidge Notary Award* to two state officials who set an example of unimpeachable personal integrity and character.

This year's awardees were New Mexico Secretary of State Rebecca Vigil-Giron, whose commitment to providing much-needed instruction to her state's Notaries Public was not stymied by the absence of a law mandating Notary training; and New Hampshire State Representative Cynthia Dokmo who sponsored House Bill 672, which represented the most significant positive change to New Hampshire's Notary laws in more than 30 years, thus inspiring the NNA's New Hampshire *New Law Review* seminar.

The NNA's 27th Annual Conference And 1st International Forum

The largest and most significant annual conference in the National Notary Association's history commenced in June at Bally's Las Vegas, Nevada. Themed "Professional Opportunities for

Professional Notaries," the landmark event hosted more than 2,100 attendees and was the largest gathering of Notaries Public in our nation's history. Notaries, legal experts and officials from across the globe — representing 32 countries and 44 U.S. states — probed issues, questioned positions and engaged in lively discussions.

The conference culminated with a first-ever gathering of its kind on American soil, the two-day *International Forum on eNotarization and eApostilles* — a meeting of global minds to explore the secure exchange of electronic documents between nations and the varied eNotarization technologies currently available or in development around the world. The 170 attendees of the *International Forum* unanimously agreed upon critical "Conclusions and Recommendations," which will be officially recognized and published by The Hague Conference on Private International Law.

In his annual "State of the Notary Public Address" at this 2005 Conference, NNA President Valera noted trends that signal an accelerating shift in the role and responsibilities of the Notary. The three-day conference addressed topics that will increasingly challenge Notary professionalism, including eNotarization, immigration, small business development, Notary ethics, Notary Signing Agent operations, identity verification practices, forgery prevention, identity theft detection and more.

The National Notary Association honored its 2005 "Notary of the Year," Carol Salter of Colorado, and four "Special Honorees" who personify the ideals of integrity, impartiality and competence — all cornerstones of the Notary Public office.

At the Conference, Vigil-Giron, the previous president of the National Association of Secre-



New Hampshire Supreme Court Chief Justice John T. Broderick with NNA President Milt Valera (left) and Executive Director/V.P. Timothy S. Reiniger (right).



North Carolina New Law Seminar

taries of State, delivered a powerful opening keynote address in which she urged Notaries to strive to be the best and aspire to the highest levels of professionalism. This sentiment was echoed at the close of the conference when, for the first time in our nation's history, a sitting chief justice of a state supreme court addressed America's Notaries. New Hampshire Supreme Court Chief Justice John T. Broderick Jr. delivered a rallying call to Notaries across the nation and around the globe to aggressively confront the new challenges. "Notaries, long the societal protectors of property and commerce through verification and authentication of identity, have a new challenge — an unparalleled challenge — in the 21st century and need to be fully engaged with the world community in finding a global solution," the Chief Justice stated.

Membership, Benefits And Service

If history has shown the office of Notary Public to be remarkably recession-proof, history has also shown that the NNA displays the same resilience to the fluctuations of our nation's economy.

First of all, while many organizations and advocacy groups are scaling back in creating and expanding membership, programs and benefits, the NNA is continuing to grow. A steadily growing membership reflects the Association's robust health. In 2004, NNA membership reached 253,000, but that number soared in 2005 to a record of more than 291,000 — an increase of more than 15 percent.

Also up in 2005 was the number of the NNA's unmatched educational programs for Notaries. The NNA is dedicated to increasing these programs because knowledge is the foremost foundation of professionalism.

In the past three years, the NNA's number of educational seminars jumped dramatically by 66 percent. In 2003 the NNA held about 600 seminars in 12 states, followed in 2004 with 780 seminars in 22 states. But in 2005, the number skyrocketed to more than 1,000 seminars in 27 states. This increase demonstrates both our commitment to educating the nation's Notaries as well as a heightening demand for knowledge, integrity and trust.

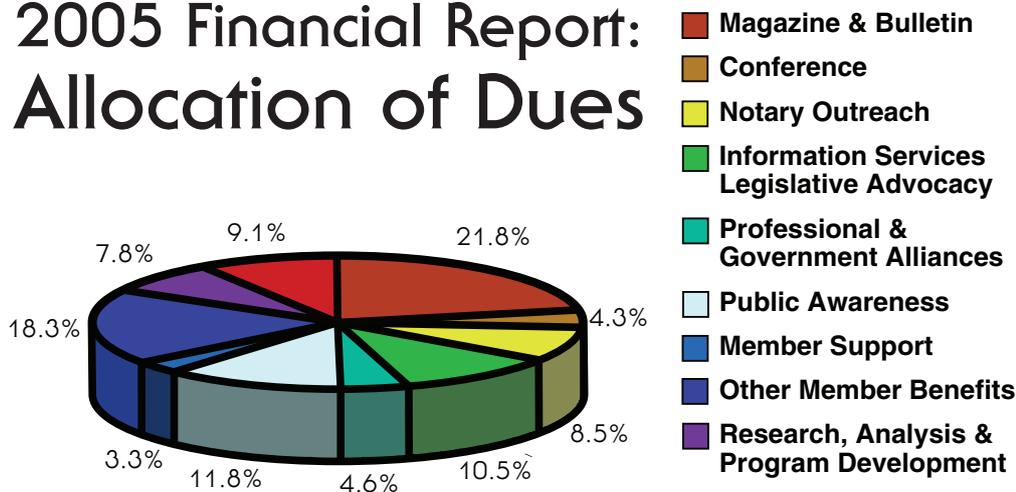
There is one thing, however, that hasn't increased.

Despite climbing interest rates, home prices, inflation and other increases in the cost of living, the NNA's annual dues have remained unchanged for the third year in a row at \$45. Dues are even less if you sign up for multi-year memberships.

We are committed to offering you membership at the lowest possible rate, despite rising costs everywhere.

In other matters, the NNA in 2005 also reinvigorated its Notary Ambassador® Program, which offers

2005 Financial Report: Allocation of Dues



continued on page 31

We look forward to a successful 2006 through furthering our mission to educate and serve Notaries nationwide and raising the public's awareness of the Notary's essential consumer protection role.

highly dedicated and professional Notaries the opportunity to serve as grassroots representatives for the Notary office in their respective states. Through various programs, including education, service to community, legislative advocacy and proactive media relations, Notary Ambassadors raise public awareness about the Notary's important role in protecting consumers against identity fraud and forgery.

To date there are 50 Notary Ambassadors operating across the country, and we have received an additional 79 applications.

Finally, the jewel of the NNA's education efforts is its comprehensive and staggering number of first-rate, regularly issued publications — 15 in all. This doesn't include the five regular electronic newsletters that are produced as well as ongoing news updates on our Web site. We are justifiably proud of our Editorial staff's efforts.

Advancing eNotarization Best Practices

Last year was a very exciting time for the NNA as it continued its quest to demonstrate eNotarization as a critically important tool for consumer protection through focused eNotarization initiatives, legislation, education, state partnerships and technology solutions.

A significant milestone was the upgrade of the NNA's proprietary Enjoa® platform to version 2.0. In addition to enhanced security features, Enjoa 2.0 gives Notaries and signers many important tools allowing them to be ready when state eNotarization procedures are established. Among these is the ability to sign documents electronically using Enjoa 2.0's signature pad. The platform also features a software developer's kit that enables programmers to incorporate it into their own proprietary business workflow.

The NNA additionally began to offer an Electronic Notary Seal,™ or ENS, which is the Notary's digital certificate when performing eNotarizations. The seal offers maximum consumer protection, while maintaining a document's trust and integrity, by enabling real-time authentication of the Notary and protection of the document from future changes or alterations.

The NNA announced the launch of the ENS Program at its 2005 Conference as a national collaboration with state governments, industry leaders and Notaries to provide standards and technologies to support the implementation of eNotarization programs throughout the world.

Lastly, the NNA established the National eNotary

Registry,™ an electronic Notary management service that allows signers and recipients of digital documents the ability to authenticate the ENS, and thereby the Notary, in real time.

On the eNotarization best-practices front, the NNA secured a major victory in North Carolina with the pas-

sage there of SB 671 — historic new legislation based in part on the NNA's *Model Notary Act*. The legislation boosted educational requirements for both new and renewing Notaries, it raised the maximum fees for paper-based acknowledgements, oaths and affirmations and, in its most progressive provision, authorized Notaries to perform electronic acknowledgments, jurats, verifications or proofs, and oaths and affirmations. Notaries can charge up to \$10 for each of these electronic acts.

The North Carolina legislation was followed by an unprecedented series of NNA *New Law Seminars* in Raleigh, Greensboro and Charlotte, which attracted nearly 2,000 Notaries who braved cold, ice and pounding rain to mark the largest turnout for a series of live seminars in NNA history.

We are proud that our initiatives are helping to battle identity fraud and forgery on the front lines.

The Future And Beyond

As we close out our 2005 initiatives, we are already in full swing as the new year brings us many more exciting opportunities and challenges.

We are pleased to announce that in 2006, Pennsylvania will become the first state to adopt the consumer protection best practices of the Electronic Notary Seal program. We are looking to expand the Identity Theft Verification Passport Program from Ohio to other states, including Nevada. We will doggedly promote and implement eNotarization best practices with both government and industry. We will continue to forge new educational partnerships, or expand existing partnerships, with several states. And we will continue to assist states that are interested in adopting the *Model Notary Act*, in whole or in part, to strengthen the Notary's fraud-fighting function.

At our headquarters we are continuing to expand our office space, personnel and services to better serve the needs of our members and the demands of the public.

We look forward to a successful 2006 through furthering our mission to educate and serve Notaries nationwide and raising the public's awareness of the Notary's essential consumer protection role. **NNA**

Notary Signing Agents: Clearer Legislation A Must

By Stacia L. Ray
sray@nationalnotary.org

Across the country, Notaries have been serving in the relatively new role of “Signing Agent” for almost two decades, providing a convenient and low-cost way for consumers to expedite real estate loan signings. Some states’ laws and regulations are clear on whether a Notary can or cannot handle real estate loan signings without supervision. Some stipulate that closings must be performed only in the presence of specially licensed escrow agents, insurance providers or attorneys.

Thus, either by design or happenstance, some state laws are friendly to Notaries who serve as Signing Agents, some are hostile toward them and some are neutral.

If you’re looking for the term “Notary Signing Agent,” or “NSA,” in your state laws, you’re probably not going to find it. In some statutes the term “lay closer” is the closest one you may find to describe the role of a Notary in a signing. There is an urgent need for Notary codes and related statutes to be revamped to reflect the involvement of the large and growing number of Notaries who handle signings.

Notaries who perform Signing Agent duties provide a great benefit to the consumer, as few problems and high customer satisfaction have been reported in parts of the country where they are clearly permitted to operate, which comprises most of the nation. One benefit is that they can be far less expensive than the attorneys who may be hired to conduct the transaction.

“NSAs give consumers access to lower-cost closings,” said Charles N. Faerber, the National Notary Association’s Vice President of Notary Affairs, who added that it is a disservice when citizens in certain states are required to pay an attorney for ministerial services that non-attorneys have been performing in most states for years.

“I am certain that an NSA’s fee structure is less than that of an attorney or title agent, making it a more cost-effective choice of doing business,” said Francis Dyson, a Maryland Notary who performed signings as an NSA before changes in state law led him to obtain his Title Insurance Producer license.

Steven Bastian, an NNA expert on notarial issues, states that Notary Signing Agents greatly benefit the public because their services are “highly convenient, provide an efficient public service, and are helpful to banks.”

Dwight Roland, another Maryland Notary who served as an NSA before the laws forced him to receive further licensing, sheds light on the convenience factor first-hand: “NSAs add more flexibility for the companies — title companies, mortgage companies and banks — in terms of being able to help them get loans closed that may not be in their state or county. Also, NSAs meet with borrowers in the evening hours when it’s most convenient for them,” Roland said.

Dyson agreed. “NSAs do closings in borrowers’ homes, whereas attorneys often want borrowers to come into their office on their schedule,” he said. “Also, we present less chance for conflict, as we don’t interpret the contracts or their content.”

The major issue facing Signing Agents is not lack of dedication or professionalism, but lack of pertinent guiding statutes and regulations. Even in jurisdictions where Notaries are allowed to perform real estate closings, the statutes often lack clarity and certain matters may be regulated while others are overlooked. When Notaries attempt to find and follow statutes that do regulate their actions, they may not know where to look. There is a pressing need for officials to draft and enact legislation that explicitly allows Notaries to perform as Signing Agents and clearly defines their powers and limitations.



While so-called “attorney-only” states stipulate that only licensed lawyers conduct any real estate-related transactions, thereby prohibiting non-attorney Notaries from serving as Signing Agents, other states lack statutory clarity. Their laws may not expressly forbid Notaries from acting as lay closers or even address the topic at all.

In several states, statutes governing the conduct of the Notaries who perform closings are hard to find. In states such as Delaware that require real estate signings to be completed by an attorney, it may be a court decision or a state bar opinion that sets the rules regarding NSAs.

In Illinois, unless the lender handles the loan from origination to closing without enlisting the services of a title office, a contracted NSA — without additional credentials as an

independent escrowee — cannot handle the closing.

In Virginia, the regulations are complicated, and Notaries may only assist in signings if they do not handle funds.

“In some states, NSAs operate in a gray area,” Faerber said. “It can be confusing. If you ask one person in some of these states, he will say Signing Agents may operate legally; if you ask another, he will say they may not. And the number of licensing hoops NSAs may have to jump through is frustrating.

“There need to be clear-cut laws in place to clarify whether a Notary can or can’t operate as an NSA in a

given state,” Faerber said. “And, of course, it’s to the public’s great advantage if a state’s law allows NSAs to operate.”

Bastian agreed.

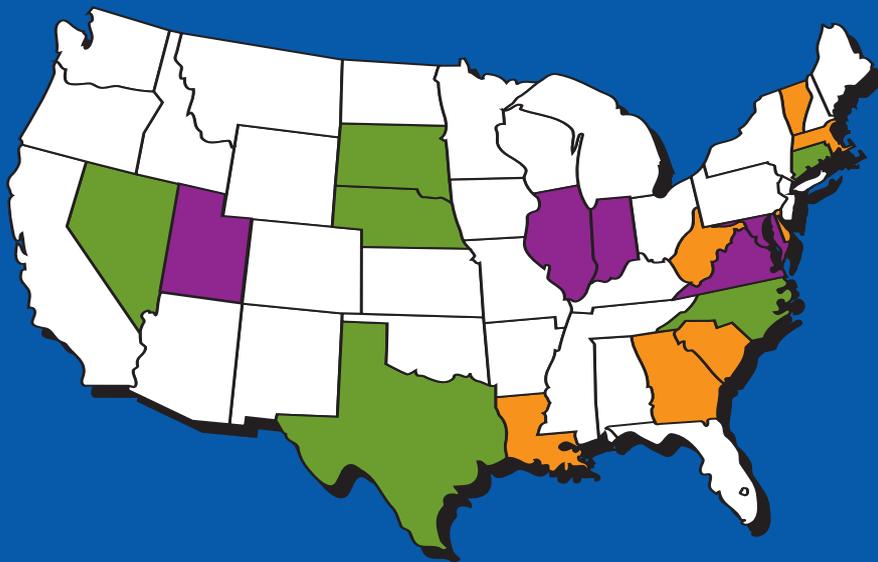
“In states where there aren’t clear rules regarding Notary Signing Agents, the NNA wants to convey that we need them, and that we champion for the Notary to have better guidelines to handle signings.”

Just ask the Notaries.

Elaine Wright, now a licensed Maryland Title Insurance Producer, served as a Notary Signing Agent without any further needed credentials until the state required that she — and all Signing Agents — receive an insurance license to

“... it’s to the public’s great advantage if a state’s law allows NSAs to operate.”

NSA-Restrictive States



Attorney-closing states: Require an attorney to be present or involved in the closing of real property transactions.

- Delaware
- Georgia
- Louisiana
- Massachusetts*
- South Carolina
- Vermont
- West Virginia

*Exception: Massachusetts Notary employees of a lender may notarize that lender’s home loan documents

Licensure-required states: Require a title insurance, escrow, or other license for most or all transactions.

- Illinois (restricts Notaries from conducting real property signings without a license)
- Indiana (prohibits Notaries from conducting real property signings without a license — effective June 2006)
- Maryland (prohibits Notaries from conducting real property signings without a license)
- Utah (prohibits Notaries from conducting real property signings without a license)
- Virginia (restricts Notaries from conducting real property signings without a license)

Opportunity-restricted states: Restricts the opportunities for NSAs to conduct real property signings.

- Connecticut (authorities conflict about whether NSAs can conduct signings)
- Nebraska (limits the fees Notaries may charge)
- Nevada (limits the fees Notaries may charge)
- North Carolina (limits the fees Notaries may charge)
- South Dakota (authorities conflict about whether NSAs can conduct signings)
- Texas (Home Equity Line of Credit — HELOC — loans are subject to Article XVI, Section 50 of the Texas Constitution and must be signed and closed in the office of a lender, attorney, or title company)

continue performing signings. She was teaching NSA classes when the new state regulation required that a Notary obtain special training, licensing, bonding and continuing education to perform escrow, closing, or settlement services.

According to the new law, "A Notary who merely attends a real estate closing or settlement that is conducted by another person or entity and who merely witnesses signatures in consideration of the statutory Notary fees is not required to secure a title insurance license in order to perform such services, but if the Notary is the only individual other than the signer who is present and the Notary is presenting real estate documents for signature, the Notary must be licensed as a title insurance producer" (§ 10-101 I of the Insurance Article of the Annotated Code of Maryland).

Maryland does not require education for Notaries. But as a result of the new law, Notaries who desire to perform NSA duties are now required to take a 30-hour insurance course, which has very little relevance to the performance of NSA duties. When students in the insurance class asked how the material related to NSA duties, the response was that Maryland does not recognize the term or function of Notaries acting as closers,

Wright said. "The ordeal was very confusing, and the fact that most of the students in my classes did not pursue the NSA business any further indicates that it was disheartening for some Notaries."

Wanda Moore, a Maryland Notary who formerly served as a Signing Agent, agreed that the Maryland restrictions are extremely rigid and costly, perhaps even unnecessary, and that the absence of occupational definitions and guidelines for NSAs contributed to the restrictions' introduction.

"The various entities — including the insurance administration, land title administration, and bonding and insurance companies — don't have a good understanding about what Notary Signing Agents do. I think each entity fears that NSAs are infringing on their territory. Perhaps they don't understand that NSAs are Notaries first: ministerial officials providing services to the public. Once they truly understand what NSAs actually do, hopefully they will realize that there is a place for us," Moore said.

Some states allow Notaries to notarize documents unsupervised at closings, but they impose such rigid fee limitations that it is virtually fruitless to pursue a career in the NSA field. For example, in Nevada and Nebraska, a Notary Signing Agent may not charge more than the modest statutory maximums for mileage and notarization, with no courier fee allowed for delivery of documents,

so most Notaries feel it is not worth the time, effort and travel cost it entails. Regarding travel fees, some jurisdictions permit the Notary to charge any amount for travel at the Notary's discretion and with the prior agreement of the signer, while again, many NSA-permitting states

do not address the issue in their laws. William A. Anderson, the NNA's Notary Affairs Manager, explained that some Notaries have been known to serve "under the radar" as Signing Agents in

The NNA is currently working with officials in states where there is a lack of clarity regarding signing laws.

states that may actually prohibit or limit the operation of NSAs, because the governing rules are confusing, little-known or hard to find. The lack of clear statutes and guidelines has hindered NSAs' ability to understand their authority and restrictions.

"The secretaries of state in each state may regulate what a Notary can and cannot do, but they seldom address whether a Notary can or cannot operate alone at real estate closings; these offices do not currently regulate the Signing Agent industry," Anderson said.

In some states, the land title industry may be the de facto rule-setter for NSAs. In other states, the state insurance department may appear to be in control. In still other states, there may seem to be more than one controlling authority, with the secretary of state and the departments of real estate and insurance all being involved to some degree in setting or enforcing rules for NSAs.

The NNA strongly encourages "ambiguous states" not only to draft laws allowing NSAs to perform their duties, but also to take the subsequent step of informing all Notaries through official state handbooks and Web sites about the authority and restrictions of Signing

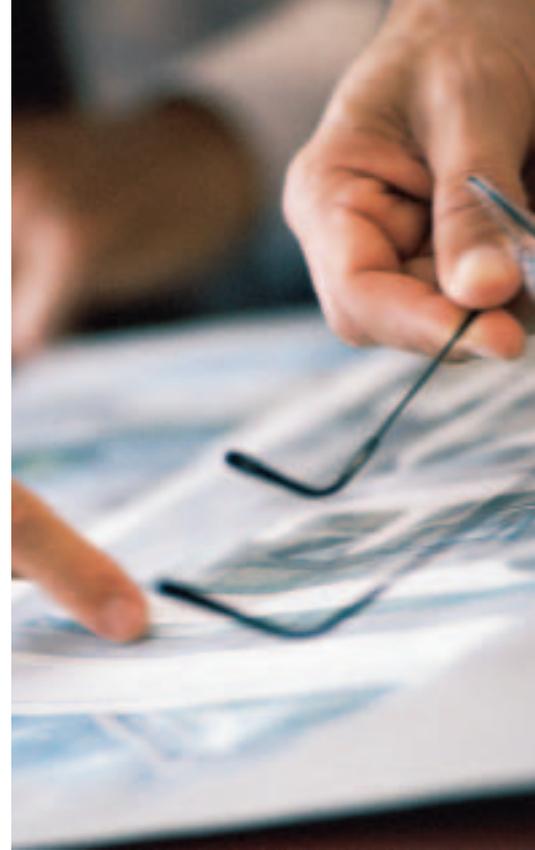


Agents. Anderson said that the laws and regulations of several states, including California, may not directly address the NSA situation, but “the NNA knows of no issue, objection or restriction in these particular states because state officials see the obvious public benefits of Signing Agents.”

The NNA offers certification programs to Notaries wishing to operate as Signing Agents. The NNA’s courses — including *Side-stepping Common Signing Agent Mistakes*, *Loan Document Know-How*, and workshops on the Truth in Lending Act and Real Estate Settlement Procedures Act — are offered to help educate and equip Agents to serve the public legally, efficiently and ethically. However, these courses, even in conjunction with all the general real estate knowledge in the world, still may

not be enough for NSAs to determine their responsibilities if pertinent statute and regulations are absent.

“If a state’s Notary code does not address the matter, is it safe to conclude that Notaries are allowed to perform as Signing Agents? I would say yes, unless there is prevailing law that expressly prohibits it,” Bastian said. “We adamantly support the authority of the secretaries of state on the matter, and we urge all states to open up their closing processes so Notaries and NSAs can offer their convenient and cost-saving services to the public.” Bastian added that the NNA is currently working with officials in states where there is a lack of clarity regarding signing laws. “We encourage state officials to help spread education and sort out the details on the matter.” **NNA**



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Nuts & Bolts: Taxes

By Nevin Barich
nbarich@nationalnotary.org

Doing your taxes is never fun, but we can help make it less of a chore.



We at the National Notary Association understand that filing your taxes is a necessary burden.

Not only can it be a difficult task, but sometimes all that hard work leads to owing more hard-earned cash to Uncle Sam. Yes, filing your income taxes by April 15 is a necessity of life, but it doesn't have to be as distasteful as you might think. Here are some helpful tips for you to help make tax season a bit less stressful:

Filing Taxes For Notaries: Self-Employed, Or Not?

Notaries are often confused as to how to go about filing their income taxes, since some operate as independent contractors while others do notarizations as employees on a company payroll. There are specific forms Notaries need to use in preparing their taxes and reporting any income from notarization.

All fees received as a Notary Public should be included in gross income — the amount of money received before anything is deducted

— on a Form 1040 Schedule C or Schedule C-EZ. You can download these forms from the Internal Revenue Service Web site at www.irs.gov.

Also, the IRS may have gotten a bad reputation over the years, but some Notaries may want to sing its praises because of tax breaks. IRS rules state that any fees received as a Notary Public are not subject to self-employment tax, which filers pay as a contribution to Social Security.

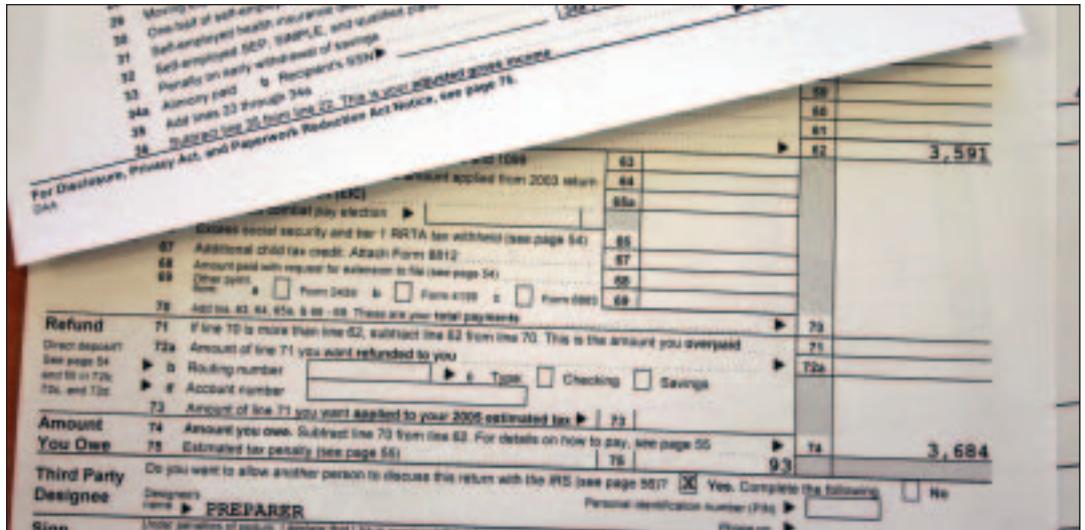
Preparing Taxes For Signing Agents

It's typically a bit more complicated for Notary Signing Agents to file their taxes because they also receive income for services connected to, but not directly a part of, their Notary work. This income would include fees for things like travel and delivering loan packages. Because such services are not notarial in nature, any earnings from them are subject to self-employment taxes.

When preparing taxes for your Signing Agent business, remember that the net profit from your notarial fees — the gross income minus applicable taxes — must be determined by using a Form 1040 Schedule C or C-EZ, the same forms other Notaries use. Then, any net earnings of \$400 or more gained from non-Notary services (*e.g.*, acting as a courier) must be declared on an IRS Form 1040 Schedule SE for self-employment tax purposes.

For example, if a Signing Agent earned \$65,000 from his or her loan signing business and \$25,000 of that came from notarial services, that \$25,000 would be exempt from self-employment tax. The remaining \$40,000, though, is subject to that tax and by law must be declared on the 1040 Schedule SE form.

Although this process may seem a nuisance, bear in mind that this is all to the benefit of Signing Agents, because at least



part of their income will always be exempt from self-employment tax. The NSA pays less tax than other self-employed workers.

Your 1099-MISC

Companies usually give each worker a W-2 form to itemize that employee's earnings and withholdings for the year. However, because Signing Agents are independent contractors and typically accept assignments from various companies, they get a form from each employer: a 1099-MISC (Miscellaneous Income).

A 1099-MISC form is issued when a Signing Agent receives at least \$600 from a company for the fiscal year. If the Agent works for more than one company, each company will send the Agent this form.

If a Signing Agent earns less than \$600 for a company, that company is not required to send out a 1099-MISC form, although the company may still do so. Regardless, the Signing Agent still has to declare that income on personal income tax forms.

Signing Agent Log: Invaluable Come Tax Time

Because Signing Agents earn income for both Notary and non-Notary work, it's important that they carefully itemize the fees they receive and expenses they incur for all of their business activities. Otherwise, they may have a difficult time doing their taxes correctly and may overlook the self-employment tax exemption given to Notaries and miss out on those savings.

One way Signing Agents can easily keep accurate financial records is with a Notary Signing Agent log. This book allows the Signing Agent to record information, such as mileage or travel expenses, specifically related

to loan document signings. A key section of such a log is a section for fee itemization for tax reporting purposes; this allows the Signing Agent to separate Notary fees from non-Notary fees with no hassle. This log becomes an invaluable resource during tax season.

Don't Wait Until The Last Minute

Drive past the post office on April 15 and you may see a line going around the block of people who waited until the last minute to file their taxes, and who are now desperately trying to turn them in before the midnight deadline.

We suggest starting your preparation early and keeping good records of your earnings and business expenses. Knowing what forms you might need to file your taxes helps a lot, but giving yourself ample time to perform this task makes it seem less daunting and allows you to take the time to check all of your calculations to prevent mistakes.

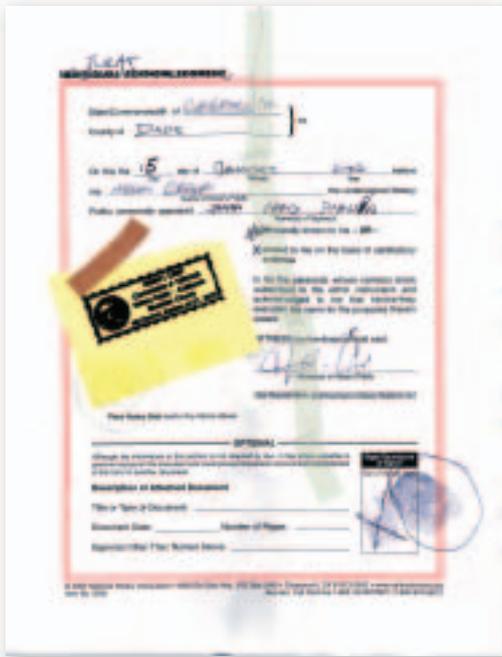
Also, while we are happy to provide this informal guide on how to go about doing your taxes as a Notary, remember that not everyone's tax situation is the same. State and local tax procedures can differ drastically. If you have uncertainty about any such matters, you should contact a professional tax preparer.

Getting The Job Done Right

It can be a bit more complicated for Notaries to file their taxes than the average worker, and mistakes can sometimes lead to IRS audits. That's why prudence, patience and the utmost care are needed when preparing your tax forms.

But remember: As Notaries, you are entitled to tax breaks that others don't get. With a little advance preparation, tax time can turn into a happy time for both you and your wallet! **NNA**

TipSheet



Making Corrections

Improperly making corrections to a document or notarial certificate can often cause the document to be rejected. Sometimes, this is the result of affixing material that covers up portions of the wording, such as correction fluid or non-transparent tape, which can create suspicion on the part of recorders.

If a Notary realizes a mistake has been made on a notarial certificate, perhaps an incorrect venue, the Notary should fix the error by simply lining through the incorrect wording, then printing or typing the correct wording above the lined-out portion of the text. The original wording should never be covered by correction fluid or tape.

This correction should be accompanied by the Notary's initials and the date the correction took place. In addition, as with any other certificate or document-altering actions done before the Notary, this change should be logged in the Notary's journal.

Less-But-Not-More Policy

On occasion, a Notary will find that a signer's name on an ID differs slightly from the name in a document's text or signature line. In these cases, the prudent Notary should be acutely aware of the fraud potential and thus follow the *less-but-not-more* rule to determine whether the ID is sufficient, or whether additional identification is required.

The *less-but-not-more rule* allows a Notary to proceed with a notarization when the name on

the document is consistent with, but has fewer elements than, the name on the ID. It would not be permitted in the reverse.

For example, if the name on a deed reads "Christina Johnson" and the signer's ID shows "Christina Ann Johnson," the Notary may proceed, since the name on the document is only missing the middle name — fewer elements than the ID.

In contrast, if the principal signs her name "Cynthia Lynn Jones-Smith" and the ID shows "Cindy L. Jones," then the ID does not sufficiently identify the signer, since "L" might stand for "Lorraine," "Laurie" or many other names, and "Smith" is not even referenced.

In these cases, the Notary should refuse to notarize unless an additional, more congruent ID is presented. As an alternative, the Notary might suggest that the signer find one or two credible identifying witnesses to vouch for identity, depending on the number of such witnesses state law requires.

Certificate Of Life

No state laws expressly stipulate that a Notary has the power to certify that a particular person is alive. Nor does any state law provide certificate language for this purpose. However, some immigrants may request such a notarial act and certificate when they present a so-called *certificate of life* to be notarized.

A certificate of life is a document that is requested annually by many foreign governments in order for expatriates living in the United States or other countries to continue collecting a federal pension.

Some of these documents may be notarized if they contain wording similar to a jurat or acknowledgment, or if the signer provides such wording. However, if any foreign form directs the Notary to certify an individual's immigration status, address or whether this person is alive or not, the Notary may not proceed.

When any immigrant presents a certificate of life for notarization, it would be best for the Notary to direct the signer to the nearest consulate of the originating country, especially if the form is printed in a foreign language.

Note

The tips provided in this section are based on established notarial customs and practices. They are intended only as general guidelines and may not reflect the laws of your state. Always refer to state statutes if you have a question about any notarization.

— The Editors



CourtReport

Statement Ruled Hearsay

Oveal v. State
164 S.W. 3d 735

A Texas man's contention that he was wrongly identified as the assailant in a burglary and assault case was thrown out by an appeals court, despite his attempt to introduce a notarized statement from a victim allegedly supporting his claim.

John Brucewayne Oveal was convicted on charges of breaking into a home, then threatening and assaulting its resident, Tiffany Landers. During his appeal, Oveal tried to submit as evidence a handwritten notarized statement signed with Landers' name that indicated another man had attacked her and told her to name Oveal.

However, because Landers did not testify at the trial, the statement was rejected as hearsay.

Oveal appealed, but the Fourteenth District Court of Appeals ruled that there were portions of the document that could reasonably be construed as inadmissible.

Missing Will's Fate Decided

In Re Estate Of Pallister
611 S.E. 2d 250 (2005)

The Supreme Court of South Carolina ruled that the testimony of a Notary Public, along with that of several other individuals, provided sufficient evidence that a deceased woman did not destroy a missing will with the intention of revoking it.

Mary Frances Pallister died in 2001 at the age of 89, leaving an estate with an estimated value of \$1.4 million. Pallister prepared a will in 1999 naming Ruth Eleanor Diem, her sister-in-law, as her primary beneficiary and named Diem along with Diem's daughter Ann Patton as Pallister's attorney in fact and alternate agent, respectively.

After Pallister's death, the 1999 will could not be found among her possessions. A probate court ruled that there was clear and convincing evidence that Pallister did not destroy the missing will. James Reames, Pallister's nephew who had visited her regularly shortly before her death, appealed, arguing that Patton had not presented sufficient evidence that Pallister did not destroy the will herself.

Several witnesses testified in court that Pallister was unlikely to have altered or destroyed a will without consulting an attorney. Moreover, the court found contradictions in Reames' testimony. Reames initially denied ever seeing the will, he later stated, however, that Pallister gave him a copy, but he did not know what happened to the original. According to court records, Reames also said that he had forms granting him access to Pallister's accounts signed by her in the presence of a Notary and two witnesses. However, the Notary testified that only Reames and Pallister were present.

The Supreme Court upheld the ruling, saying that sufficient evidence had been presented to indicate Pallister did not destroy her will with the intent to revoke it.

Woman's Claim Against Notary Is Upheld

Crumbaker v. Zadow
151 S.W. 3d 94 (Mo.App. E.D. 2004)

A woman filed a suit against a Notary and his surety bond company in a Missouri court, alleging that he falsely notarized several quitclaim deeds involving property of an estate to which she was an heir.

According to the petition of Judy Crumbaker, Albert Zadow is suspected of falsely certifying quitclaim deeds to real estate owned by the late Leslie Rees that transferred the property to Rees' ex-wife, Eleanor Finneran.

Zadow argued that Crumbaker had no interest in the properties because a dissolution decree had already transferred title to Finneran.

Though a lower court ruled in favor of Zadow without explanation, the Missouri Court of Appeals rejected Zadow's argument, stating that the dissolution decree did not automatically convey title or nullify Crumbaker's interest in the proceedings.

Adviser

I need a simple rule to handle discrepancies between the signer's name on the document and on the signer's ID. How does the "less but not more rule" apply in different circumstances like hyphenated names, designations like "Jr." and "II," and married names added on to maiden names with no hyphen, like "Mary Smith Jones?"

M.S., Tarzana, California

The simple answer is that the "less but not more rule" should be applied only to the signer's middle name. If the ID shows "John David Smith," for example, the principal may sign and be identified as "John D. Smith." The rule does not apply to persons with two last names, hyphenated or not (e.g., "Mary Smith-Jones" or "Mary Smith Jones"), or to suffixes such as "Jr." or "II."

If the ID and document names don't agree, the signer might check to see whether both names might be signed and connected with the term "aka" (also known as), in which case only the ID name is inserted on your Notary certificate. Relying on a credible witness to identify the signer by a particular name may be another option. If none of these solutions apply, however, you may have to refuse the notarization.

If I am notarizing a set of loan documents and I see a witness line on the deed of trust or mortgage, should I sign as the witness?

R.S., Hershey, Pennsylvania

The decision to sign as a witness in addition to notarizing any document is not one that the Notary should make. You may do so if instructed by the signer, by the lawyer or other authority overseeing the transaction, or by printed instructions on or with the document.

If Jane Doe is signing as attorney in fact for Susie Smith, how should the completed signature read?

L.J., Dorothy, New Jersey

The attorney in fact will sign the document in some way that indicates that he or she is

signing on behalf of the absent party. In your example, this might be "Jane Doe for Susie Smith as attorney in fact," or maybe "Susie Smith, principal, by attorney in fact Jane Doe." However, a non-attorney Notary would never instruct the attorney in fact on how to sign a document. If the signer is seeking guidance, have him or her contact the document's issuing or receiving agency, or the person who prepared the document.

When I notarize a set of loan documents for a couple, must I complete a separate journal entry for each notarial act for both husband and wife? Can I combine them somehow?

J.D., Lake Arrowhead, California

You must complete a journal entry for each notarial act that you perform. If you have a husband and wife each signing three documents, that would require six journal entries. You may use certain shortcuts, such as ditto marks for identical information, on sequential entries. Also, you may draw a diagonal line through sequential signature spaces and have the signer sign on the diagonal line.

Several companies have asked me whether I can do e-docs. What are e-docs and what do I need in order to handle them?

L.W., Clifton Beach, New Jersey

"E-docs" are electronic documents. If you are a Notary Signing Agent, a loan document package may comprise e-docs sent to you electronically. You would then download and print out the documents for a loan signing. This method is gaining popularity because it is both faster and cheaper than sending documents by delivery service.

To accept assignments involving e-docs, you first must have a computer with a high-speed Internet connection. Second, you need a laser printer that is compatible with Hewlett-Packard Printer Command Language (PCL) version 4 or higher. The printer must have at least

continued on page 46

Note

Adviser answers are based on laws in the state where the question originated and may not reflect the laws of other states. If in doubt, always refer to your own state statutes.

— The Editors

Adviser

5 megabytes of memory and must be able to print both letter and legal size documents, ideally from separate paper trays.

Additionally, certain software programs must also be installed on your computer, but these are typically provided by the lender or document preparer and are free of charge.

I have been asked to notarize a last will and testament and a durable power of attorney. I've never done either type of document. Is there anything unusual that I need to know?

R.A., Joshua, Texas

A durable power of attorney may be notarized by following all the normal procedures for a notarization and then heeding any special instructions regarding witnesses, certificates and other matters.

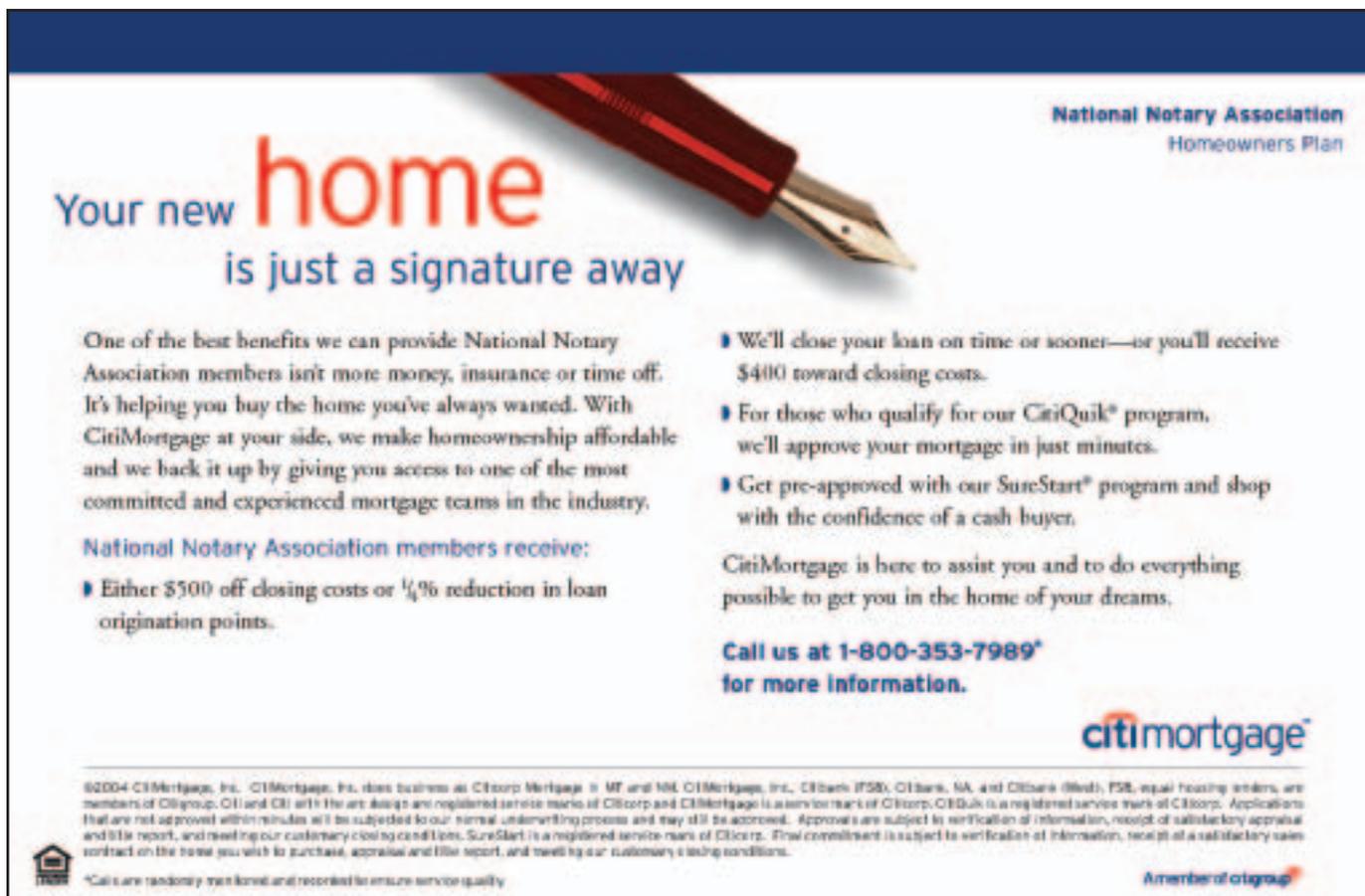
Wills may require special care and caution.

They are highly sensitive documents, the format of which is dictated by strict laws. The slightest deviation from these laws can nullify a will. In some cases, holographic (handwritten) wills have actually been voided by notarization.

A Notary should notarize a document described as a will only if a notarial certificate is provided or stipulated for each signer, and the signers are not asking the Notary for directions about how to proceed. Any such questions should properly be answered only by an attorney.

If the first seal impression is smudged or incomplete, should it be crossed out after a correct seal is applied? How many times can a document be stamped in order to create an acceptable seal impression?

T.S., La Mesa, California



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It is not necessary to cross out an imperfect Notary seal impression once a clear impression is achieved.

In theory, you may stamp a document an indefinite number of times until an acceptable seal impression is made. In reality, however, if the seal impression is flawed time after time, you may wish to stop, assess the situation and correct any problems before creating another seal impression. Can you adjust the amount of ink on the seal? Is the document resting on an even surface? Make test impressions on scrap paper until a satisfactory impression is created.

Can a Notary refuse service just because he or she is “too busy?”

C.S., Rancho Mirage, California

You must honor all lawful and reasonable requests to notarize. Refusing services could cause you to be liable if any damages result

from the refusal, and it might cause disciplinary action against your commission. However, it is not reasonable for a signer to expect you to drop everything if he or she walks in unannounced when you are occupied with other work. However, you should make every attempt to perform such an unplanned notarization within a reasonable time. Alternately, you might offer to schedule an appointment with the signer for a later time when you are free, particularly if many notarizations are involved. You may also find it useful to keep a list of other nearby Notaries who might immediately accommodate an unexpected signer.

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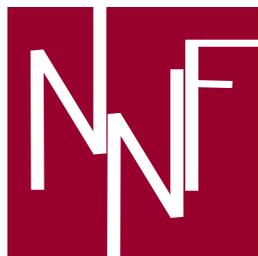
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THE ART OF GIVING

The National Notary Foundation

We make a living by what we get, but we make a life by what we give.— Winston Churchill

Notaries' Aid Sets '05 Record

The numbers are in. The year 2005 was a record one for giving. Indiana University's Center on Philanthropy reported that contributions from Americans to the Southeast Asia tsunami victims totaled \$1.7 billion.

Relief contributions to the casualties of the earthquake in Pakistan amounted to \$78 million.

And the value of private contributions in response to Hurricane Katrina and Rita has reached \$3.12 billion.

While these numbers are staggering and perhaps even intimidating to those of us who are not accustomed to writing million-dollar checks, they show that we as Americans are both generous and compassionate.

At the National Notary Foundation, record contributions came in from NNA members and many other sympathetic persons every time we initiated a campaign drive; for the tsunami, for Pakistan, for cancer research, for scholarship endowments and, of course, for Hurricanes Katrina and Rita.

And, if ever there were any doubts about how effective Notaries can be in rallying for a worthy cause and making a huge difference, they were dispelled

once and for all in 2005 as Notaries gave, and gave generously — particularly for Katrina and Rita.

It showed that each of us can make a difference and beneficially impact lives far beyond our circle of family and friends.

Notaries, as they continue to

do, showed that they are a force, whether individually or collectively in whatever they set their minds to do.

And it shows that when disaster strikes, Notaries will continue to rally for relief efforts, and will give generously.

Benevolence Trumps A Party

The Jewett Orthopaedic Clinic in Orlando, Florida, was in the midst of planning its annual holiday party when Hurricanes Katrina, and then Rita, devastated the Gulf States.

"The more we worked on the party, the more we realized that this should not be our focus," said one staff member. "We are in the medical profession and we felt we needed to help others, not party at a time like this."

The medical group looked for ways to travel to the hard-hit areas but found that moving and supporting people there might prove more of a complication than an assistance for authorities in the impacted regions. "We thought that if going was not in the best interest of the region,

then a donation would be the next best option."

Then the staff of Jewett Orthopaedic, including 24 physicians and 10 physician's assistants, put the decision of whether to hold a holiday party to a vote. The vote to cancel the party was overwhelming. But then the question arose: "Where do we donate the money — \$25,000 — and how can we maximize our contribution?"

With a nearly a dozen Notaries on staff, all of whom are dedicated members of the NNA, the answer was easy — the National Notary Foundation, which agreed to match Jewett's contribution. Just one story of generosity from the many that we continue to hear involving Notaries.